

REMARKS

Claims 1-28 were pending in the application prior to this Amendment/Response. By this Amendment/Response, claims 1-2 and 26-28 are cancelled as being drawn to a non-elected invention, and new claims 49-63 are added. Claims 8-9, 11-14, and 17 were rejected only for double patenting, and have therefore been amended only so that they are no longer dependent from rejected (now amended) claims. Claims 18-19 and 25 were indicated to be allowable if rewritten in independent form, and have been amended accordingly. Claims 3-7, 10, 15-16, and 20-24 stand rejected as unpatentable over Lin '416, and are amended by this Amendment/Response. In view of the amendments made herein, favorable consideration of the application is respectfully requested.

1. A Terminal Disclaimer is Provided to Overcome the Double Patenting Rejection.

In response to the rejection for double patenting, applicant hereby submits a Terminal Disclaimer disclaiming the portion of the patent term extending beyond the term of applicant's U.S. Patent No. 6,620,196, as provided by the Disclaimer. Claims 8-9, 11-14, and 17 are believed to be allowable in view of the Disclaimer.

2. The Implant of Amended Claim 3 is Patentable Over Lin '416 Because Applicant's Claimed Implant Has A Substantially Solid Center, While the Lin '416 Implant Has a Ring Shape With a Hole in the Center.

Figures 22A-22Q show preferred embodiments of the invention of amended claim 3, as elected in response to the Restriction Requirement in this case. All of those embodiments illustrate the limitation set forth in the amendment offered herein, namely, that the implant has a substantially solid center when the implant is in its first (folded) configuration. Those embodiments are distinct from the embodiment shown, for example, in FIG. 15E, which does not

have a substantially solid center when the implant is in its first (folded) configuration, and was not elected for prosecution in the application.

In contrast, the implants of Lin '416 are disclosed as being "a ring-shaped intervertebral disc having an opening." U.S. Patent No. 5,716,416 to Lin, col. 1, lines 44-45; Id. at col. 2, line 29. Further, the "[t]wo open ends of the ring-shaped disc of the [Lin] invention encircle the ring center for 300 degrees or so." Id. at col. 2, lines 38-40. None of the embodiments disclosed or suggested by Lin '416 has a substantially solid center when the implant is in its first (folded) configuration.

The drawings below illustrate the difference. FIG. 22N, which is representative of the drawings in applicant's application, shows an implant having a substantially solid center as claimed by claim 3. In contrast, FIG. 1E, which is representative of the drawings in Lin '416, shows an implant having an opening in the center, as not claimed by claim 3.

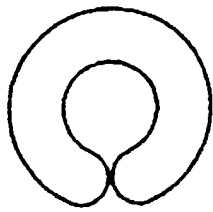
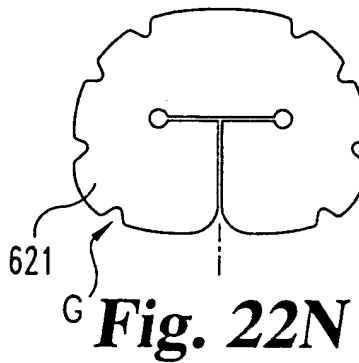


FIG. 1 E

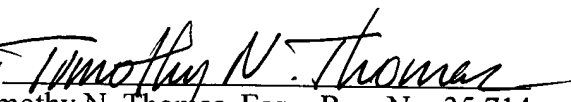
Lin '416



Present Invention

Because the invention claimed in by claim 3 has the explicit limitation that the implant must have a substantially solid center when the implant is in its first (folded) configuration, and because the cited prior does not have a substantially solid center when so configured, and instead has an opening at the center when the implant is in its first ("folded") configuration, the claimed invention is believed to be patentable over the cited prior art. Favorable consideration of the amended application is therefore respectfully requested.

Respectfully submitted,

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